

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION**

**CIVIL NO. 2:92CV89**

**UNITED STATES OF AMERICA, )**

**Plaintiff, )**

**Vs. )**

**O R D E R**

**ROBERT JOHNSTON; GERTRUDE )**

**JOHNSTON; MICHELE )**

**JOHNSTON; and IMPERIUM )**

**CORPORATION, )**

**Defendants. )**

**)**

**THIS MATTER** is before the Court on the second filing made by

Robert Johnston since the Order of Sale filed March 10, 2006.

The previous filing was stricken from the record. This filing is also ordered to be so stricken. Johnston has been a prolific filer in this Court. In a previous companion case, he was warned against making frivolous filings. Johnston is hereby placed on notice that any future frivolous filings by him may result in the imposition of sanctions against him. Federal Rule of Civil Procedure 11 provides in pertinent part:

By presenting to the court . . . a pleading, . . . an . . . unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances-

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims . . . are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law . . .;

(3) the allegations and other factual contentions have evidentiary support or, . . . are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . . .

**Fed. R. Civ. P. 11(b).** Johnston is cautioned against any future frivolous filings. In the event that he does not heed this caution, sanctions of both a monetary and non-monetary nature may be imposed against him. *Pro se* litigants do not have an absolute and unconditional right of access to the courts in order to prosecute frivolous, malicious, abusive or vexatious motions. *Demos v. Keating*, 33 Fed. Appx. 918 (10<sup>th</sup> Cir. 2002); *Tinker v. Hanks*, 255 F.3d 444, 445 (7<sup>th</sup> Cir. 2001); *In re Vincent*, 105 F.3d 943 (4<sup>th</sup> Cir. 1997). Johnston is hereby warned that future frivolous filings may result in monetary sanctions such as an award of attorneys' fees or a penalty to be paid into Court. Such conduct may also result in the imposition of a pre-filing review system. *Vestal v. Clinton*, 106 F.3d 553 (4<sup>th</sup> Cir. 1997). If such a system is placed in effect, pleadings presented to

the Court which are not made in good faith and which do not contain substance, will be summarily dismissed as frivolous. ***Foley v. Fix, 106 F.3d 556 (4<sup>th</sup> Cir. 1997); In re Head, 19 F.3d 1429 (table), 1994 WL 118464 (4<sup>th</sup> Cir. 1994).*** Thereafter, if such writings persist, the pre-filing system may be modified to include an injunction from filings. See, 28 U.S.C. § 1651(a); *In re Martin-Trigona, 737 F.2d 1254 (2d Cir. 1984)*.

**IT IS, THEREFORE, ORDERED** that the filing made on March 24, 2006 captioned “3/10/2006 Order of Sale in Opposition to Rule 12(b)(6), Federal Rules of Civil Procedure,” is hereby **STRICKEN** from the record.

**IT IS FURTHER ORDERED** that in the event Robert Johnston makes a future frivolous filing, he may be subjected to sanctions.

Signed: April 5, 2006



Lacy H. Thornburg  
United States District Judge

